

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:07cr039**

**UNITED STATES OF AMERICA,**

**Vs.**

**KURT CHRISTOPHER LYNCH,**

**Defendant.**

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**ORDER**

THIS CAUSE coming on to be heard and being heard before the undersigned upon a violation report filed in the above entitled cause on July 9, 2007 by the United States Probation Office. In the violation report the United States Probation Office alleged that the defendant had violated terms and conditions of his pretrial release. At the call of this matter on for hearing it appeared that the defendant was present with his counsel, attorney James O. Rice, Jr., and that the Government was present through Assistant United States Attorney, Corey Ellis, and from the evidence offered and from the statements of the Assistant United States Attorney and the attorney for the defendant, and the records in this cause, the court makes the following findings.

**Findings:** At the call of the matter, the defendant, by and through his attorney, admitted the allegations contained in the violation report that had been filed on July 9, 2007. The Government introduced, without objection, the violation report into evidence.

A petition was filed on May 4, 2007 alleging that the defendant had violated terms and conditions of supervised release. The defendant had been convicted of the crime of

conspiracy to distribute and possess with intent to distribute methamphetamine and had been placed on supervised release on November 25, 2005. In the petition filed on May 4, 2007 the United States Probation Office alleged that the defendant violated the condition of supervision that directs that he not commit another federal, state or local crime. It was alleged that on February 16, 2007 the defendant was arrested for the driving of driving while impaired and no inspection certificate. On May 16, 2007, a hearing was held in regard to the detention of the defendant. On that date, the undersigned entered an order releasing the defendant on a \$25,000.00 unsecured bond. The undersigned further set conditions of release which included the following:

- (1) That the defendant shall not commit any offense in violation of federal, state or local law while on release in this case.

On June 23, 2007 the defendant committed the offense of driving while license revoked in Haywood County, NC.

**Discussion.** 18 U.S.C. § 3148(b)(1) provides as follows: The judicial officer shall enter an order of revocation and detention if, after a hearing, the judicial officer -----

- (1) finds that there is----
  - (A) probable cause to believe that the person has committed a Federal, State, or local crime while on release; or
  - (B) clear and convincing evidence that the person has violated any other condition of release; and
- (2) finds that ---
  - (A) based on the factors set forth in section 3142(g) of this title, there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community; or
  - (B) the person is unlikely to abide by any condition or combination of conditions of release.

If there is probable cause to believe that, while on release, the person committed a Federal, State, or local felony, a rebuttable presumption arises that no condition or combination of conditions will assure that the person will not pose a danger to the safety of any other person or the community.”

Based upon the evidence, the undersigned finds that there is probable cause to believe that the defendant committed a state crime while on release. Driving while license revoked is a state crime which is a misdemeanor. Due to the fact that there is not probable cause to believe that the defendant committed a state felony, a rebuttable presumption does not arise that there is no condition or combination of conditions would assure that the release of the defendant would not pose a danger to the safety of any other person or the community.

The undersigned has considered the petition for summons of offender filed on May 4, 2007 which contained the criminal record of the defendant. The undersigned has further considered the following factors as set forth under 18 U.S.C. § 3142(g). Those factors being as follows:

1. The nature and circumstances of the offense charged do not involve either a crime of violence or a narcotic drug;
2. The weight of the evidence against the defendant appears to be strong and significant. The defendant has admitted that he committed the offense of driving while license revoked;
3. The history and characteristics of the person show that the defendant has family ties in Haywood County. He further has employment and he has a length of residence in the community. The undersigned has further considered the criminal history of the defendant

in regard to drug or alcohol abuse which shows that the defendant has a criminal record for disorderly intoxication, driving with an unlawful blood alcohol level, possession of marijuana, and intoxicated and disruptive. In regard to the defendant's criminal history, in addition to the above referenced charges, the defendant has been convicted of the following: six counts of no valid driver's license and five counts of driving while license either suspended or revoked. He also has been convicted of carrying a concealed weapon, trespassing, two counts of assault, communicating threats and assault on a female. It appears at the time of the current offense or arrest the defendant was on probation, parole or other release pending trial in that he was serving a term of supervised release and had further been released on bond for a charge of driving while impaired.

In regard to the seriousness of the danger to any other person or the community that would be posed by the person's release, the court finds that based upon the foregoing the release of the defendant would create a risk of harm or damage to any other person or the community. As a result, the undersigned has determined to enter an order revoking the terms and conditions of pretrial release previously entered in this matter and entering an order detaining the defendant.

### **ORDER**

**WHEREFORE**, IT IS THE **ORDER** of the court that the terms and conditions of pretrial release previously entered in this matter are hereby **REVOKED** and it is **ORDERED** that the defendant be detained pending further proceedings in this matter.

Signed: July 19, 2007

Dennis L. Howell

Dennis L. Howell  
United States Magistrate Judge

